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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY KOMONYI,

Defendant and Appellant.

B208797

(Los Angeles County
Super. Ct. Nos. PA054360,
PA054608)

APPEAL from a judgment of the Superior Court of Los Angeles County. Shari K. Silver, Judge. Affirmed in part and reversed in part with directions.

Laura Schaefer, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, and Shawn McGahey Webb, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Timothy Komonyi appeals from the judgment entered following a jury trial in which he was convicted of second degree burglary of a vehicle, two counts of attempting to burn a structure, possession of an incendiary device, making criminal threats, grand theft, eleven counts of felony vandalism, three counts of misdemeanor vandalism, and misdemeanor violation of a restraining order. Defendant contends the evidence was insufficient to support conviction of two counts of attempting to burn a structure and violating a restraining order. He further contends that Penal Code section 654 precludes punishment on each of several groups of counts. (All further statutory references pertain to the Penal Code unless otherwise specified.) We reverse one of defendant's attempt to burn convictions but otherwise affirm.

BACKGROUND

From the summer of 2005 through January of 2006, defendant committed numerous offenses loosely related to his divorce from Veronica Lopez and the sale to Andrade Financial of the townhouse in Canyon Country in which defendant had lived with Lopez and their daughter. His acts included breaking windows at neighboring townhouses and at the offices of Andrade Financial and the attorneys who represented Lopez and Andrade. We discuss only the evidence pertinent to understanding and resolving the issues raised in defendant's appeal.

Lopez had moved out of the townhouse in 2004. When she could no longer afford the payments, she arranged to sell the townhouse to Andrade Financial. When Lopez and Alexandra Mayorga, an employee of Andrade Financial, went to the townhouse on April 27, 2005, to attempt to get defendant to sign an interspousal grant deed, defendant refused to let them in, refused to sign the deed, and threatened to blow up the townhouse. (All date references pertain to 2005, unless otherwise noted.)

The sale of the townhouse to Andrade Financial closed on May 11. Lopez and Mayorga returned to the townhouse on June 29. They could not open the front door because five vertical steel poles had been cemented into holes placed into the foundation just inside the door. Lopez and Mayorga entered the townhouse through the garage.

Virtually all of the fixtures, appliances, cabinets, lights, and floor coverings had been removed. Concrete had been poured into the upstairs toilet. All of the windows had been painted brown. On one window was written, ““See you in hell bitch”” and on a wall in the same room was written, ““Fuck you.”” Defendant’s truck was parked in the garage.

A neighbor whose townhouse shared a common wall with Lopez’s townhouse testified that during a period of about two weeks sometime in the summer of 2005, she heard loud sounds of construction or demolition coming from Lopez’s townhouse late at night. The neighbor thought she heard metal conduit being pulled through the walls.

Another neighbor testified that sometime prior to July 4, she noticed defendant removing and discarding broken pieces of drywall and other items from the townhouse.

On July 15, defendant entered the office of Mark O’Brien, the attorney representing Andrade in an unlawful detainer action to evict defendant from the townhouse. Defendant told O’Brien’s legal assistant that he still had his truck and tools in the garage of the townhome. Defendant subsequently told Detectives Michael Cofield and Edward Nordskog that he was sleeping in his truck inside the townhouse garage and went to O’Brien’s office to ask if he could stay in the townhouse a little longer.

On August 11, John Andrade viewed the townhouse and observed the extensive damage, including concrete-filled drains and toilets. His company ultimately spent about \$57,000 to rehabilitate the townhouse.

On August 13, electrician Robert Nuelle went to the townhouse to repair the electrical system for Andrade Financial. He went from room to room to determine why there was no power. In a room on the top floor he noticed that a piece of plywood had been stuck down to the floor with drywall patch. He pulled up the plywood and discovered plastic wrap covering various bare wires sitting atop wood and drywall debris. He also saw low-voltage wiring spliced into the 110-volt main household wiring, which would cause the low-voltage wiring to burn when the regular household current ran through it. The low-voltage wiring led behind pieces of styrofoam, which Nuelle removed. He then peered beneath adjacent floorboards, where he saw the low-voltage

wiring attached to several plastic bottles bound together with electrical tape. Nuelle called the police. Bomb squad member Detective Cofield responded with other Los Angeles County Sheriff's Department personnel. Cofield used ropes to remotely remove the bottles and attachments from beneath the floor. One of the bottles was empty and the other contained a small amount of nonflammable liquid. Attached to the bottles with low voltage wiring was a heating element from an appliance. Cofield found additional styrofoam packed under the floor. Cofield determined that the assemblage was an incendiary device designed to engage when the electrical system had been repaired and power had been restored to the townhouse. When power flowed through the 110-volt wiring, it would rapidly cause the heating element to reach a high temperature, which would set the plastic bottles on fire. The styrofoam would act as fuel, helping the fire to spread under the floor to the walls.

On August 15, contractor Steven Hempel went to the townhouse to examine the heating and air conditioning systems for Andrade Financial. Many missing parts made the heater inoperable. Hempel removed the flue to examine the air conditioner, which sat directly above the heater. A plastic bottle containing fluid fell out of the flue. Hempel testified that the gases vented through the flue are hot enough to melt a plastic bottle. Hempel discovered another liquid-filled plastic bottle beneath the heater. When Hempel examined the heating ducts, he found numerous chunks of styrofoam and a third plastic bottle filled with liquid. That bottle sat atop a heating element that was connected to low-voltage wires, and the other ends of the wires lay loose beneath an open junction box for the household wiring. The heating element was surrounded by cardboard. The sheriff's department hazardous materials team responded to the townhouse and found a fourth bottle in the heater exhaust duct. They determined that the bottles contained a flammable material that smelled of gasoline. Arson investigator Detective Nordskog also responded to the scene. He concluded that the bottle in the flue was an incendiary device. When the heater had been repaired and turned on, the bottle would have melted and dumped the fuel inside it into the heater to produce a bigger flame and start a fire in the heater

compartment. The bottle beneath the heater would have provided additional fuel to boost that fire. Nordskog concluded that the bottle and heating element in the duct was also an incendiary device. As with the device discovered on August 13, 2005, once power had been restored to the townhouse, the heating element would have become hot enough to burn the plastic bottle, and its flammable contents and the materials around it would have helped spread the fire. Nordskog testified that in cases where incendiary devices had been planted, it was very common to find multiple devices in a single area.

Since the summer of 2005, Lopez had had a valid restraining order prohibiting defendant from coming within 100 yards of Lopez, their daughter, Lopez's family members, and the home in Pacoima where Lopez and her daughter resided with Lopez's siblings and mother. Defendant had been served with that order.

On the night of January 20, 2006, Raul Villagrana, who was dating Lopez's sister Rosanna, parked and locked his SUV on the street in front of the Lopez family home in Pacoima. Lopez and her family members were home that night. When Villagrana went out at 3:00 a.m. the next morning, he found that the back window of the SUV had been broken, one tire had been punctured and was flat, and the paint had been scratched down one entire side and at the back. Gym bags, sports equipment, documents, books, and other items were missing from the interior of the SUV. Later on January 21, 2006, Villagrana saw defendant parked outside Villagrana's house and detained him until the police arrived and arrested defendant. Numerous personal identifying facts regarding Villagrana were written on a legal pad found in defendant's car, including Villagrana's social security number, driver's license number, health insurance number, credit union account number, and information identifying his doctor, attorney, and counselor. All of this information had been contained in the documents stolen from Villagrana's SUV during the burglary the previous night.

On January 27, 2006, the police searched the home of defendant's parents, where defendant was staying. There, among defendant's property, the police found a detailed diagram of the townhome. On the diagram were noted both the location of the heater and

the device discovered under the floorboards on August 13, 2005. Some of Villagrana's property was found in defendant's truck, and other items were in shrubbery next to the truck.

The jury convicted defendant of second degree burglary of a vehicle, two counts of attempting to burn a structure, possession of an incendiary device, making criminal threats, grand theft, eleven counts of felony vandalism, three counts of misdemeanor vandalism, and misdemeanor violation of a restraining order. The jury acquitted defendant of attempted murder and could not reach a verdict on a charge of theft of identifying information. The trial court sentenced defendant to 17 years in prison.

DISCUSSION

1. Sufficiency of evidence

Defendant contends that the evidence was insufficient to support his convictions of two counts of attempting to burn a structure and violating a restraining order.

To resolve these issues, we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable jury could find guilt beyond a reasonable doubt. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138.) We presume the existence of every fact supporting the judgment that the jury could reasonably deduce from the evidence and make all reasonable inferences that support the judgment. (*People v. Barnes* (1986) 42 Cal.3d 284, 303; *People v. Catlin* (2001) 26 Cal.4th 81, 139.)

a. Counts 7 and 8 – attempting to burn a structure

Defendant argues that the evidence supports the commission of a single attempt to burn the townhouse, not two attempts. The Attorney General argues that the evidence supports an inference that defendant placed the incendiary device found under the floorboards sometime before its discovery on August 13, then returned and planted the second incendiary device in the heater sometime between August 13 and its discovery on August 15. But nothing in the record indicates defendant returned to the townhouse between the discovery of the two devices and planted the items found in and around the

heater. There was no evidence that defendant had been at the townhouse at any time from August 13 to August 15. Neither Cofield nor anyone else testified that a search for other incendiary devices was undertaken after the first one was discovered under the floorboards on August 13. Although it is unclear when defendant finally moved out of the townhouse, nothing indicated that he was still living there between August 13 and August 15. For example, none of the witnesses who testified regarding the discoveries of August 13 and August 15 mentioned seeing a truck in the garage, as Lopez and Mayorga did on their June 29 visit, or any other evidence that a person still occupied the townhouse.

The prosecutor never articulated a ground for charging two separate attempts to burn. She did not argue that defendant planted the second incendiary device after the first one was discovered. Her express theory was that defendant stripped the townhome and turned it into a “booby trap” by planting multiple incendiary devices and auxiliary fuel under the floorboards, in the ducts, and around the heater in an ongoing course of conduct during the summer of 2005 when the neighbors heard construction noises. She argued, “[A]ccording to the expert opinion of these detectives, that multiple fires and multiple incendiary devices are used by arsonists, so that . . . there’s a fail-safe if something else goes wrong. If one of them doesn’t work, something else will.” The prosecutor also argued that defendant was living in his truck in the garage of the townhouse, as defendant told O’Brien on July 15, so that he could get out of the “big giant booby trap” quickly if it began burning. This “booby trap” theory, encompassing all of the devices and fuel as a coordinated system to start a fire was supported by the evidence. Nordskog testified that where incendiary devices were planted, it was very common to find multiple devices in a single area. The diagram of the townhouse found among defendant’s property apparently reflected both the location of the heater and the device discovered under the floorboards on August 13.

In contrast, any inference by the jury that defendant returned to plant the devices found on August 15 after the first device was found on August 13 would be based upon

speculation, which is insufficient to support a conviction. (*People v. Waidla* (2000) 22 Cal.4th 690, 735.) Because the evidence supported just a single count of attempting to burn a structure, we reverse count 8.

b. Count 3 – violating a restraining order

Defendant contends the evidence was insufficient to establish that he was within 100 yards of Lopez, her family members, or the Lopez home in Pacoima, and the evidence thus failed to show that he violated the restraining order. The charge of violating the restraining order was based upon defendant's presence at the Pacoima house when he burglarized Villagrana's car, which was parked on the street in front of the house. The restraining order prohibited him from coming within 100 yards of the "home" of Lopez and her family members. Defendant effectively admits that he was somewhere outside the Lopez residence when he burglarized Villagrana's car. He contests only the prosecution's failure to show that the car was parked within 100 yards of the house itself, as opposed to the boundaries of the lot on which the house sat.

Villagrana testified he parked his SUV "[i]n front of the [Lopez] residence on the street." Jurors could reasonably infer that Villagrana's SUV was within a few feet of the Lopez lot. Although the boundaries of the "home" were not defined by the restraining order or jury instructions, and we have found no authority defining such boundaries for the purpose of enforcement of a restraining order, a home's yards are traditionally considered to be a part of "home" in which the occupants have both possessory and privacy interests. The restraining order used the word "home," not "house" or any other word commonly referring to a structure. The jury could reasonably construe the scope of "home" to include the front yard. A different analysis might be required if defendant argued that the restraining order was unduly vague, but he neither made nor makes such a contention. In any event, jurors could reasonably conclude, based in part upon their experience and familiarity with the common layout of homes in the vast majority of neighborhoods in Los Angeles County, that Villagrana's SUV would have been within 100 yards of the Lopez house itself. (*People v. Smith* (1976) 59 Cal.App.3d 751, 755

[jury could rely on common experience to conclude miscarriage caused by beating], overruled on another ground in *People v. Davis* (1994) 7 Cal.4th 797, 810; *People v. Jordan* (1962) 204 Cal.App.2d 782, 790 [jury may rely on common sense and general experience in reaching conclusion from proven facts].) A setback of 100 yards or more from the street is rare in urban and suburban Los Angeles County. Jurors could infer from Lopez’s testimony regarding her difficulty in making payments on the townhouse, and from the photographs of the townhouse and complex admitted into evidence, that Lopez was not extraordinarily wealthy and was unlikely to be living in a house set more than 100 yards back from the street. Under the circumstances, substantial evidence supported the conviction.

2. Section 654

Section 654, subdivision (a) provides that “[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” The statute prohibits punishment for two crimes arising from a single, indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) If all of the crimes were merely incidental to, or were the means of accomplishing or facilitating one objective, a defendant may be punished only once. (*Ibid.*) But if a defendant had separate objectives that “were either (1) consecutive even if similar or (2) different even if simultaneous,” multiple punishment is permissible, even if the crimes shared common acts or were parts of an otherwise indivisible course of conduct. (*People v. Britt* (2004) 32 Cal.4th 944, 952; *People v. Harrison* (1989) 48 Cal.3d 321, 335.)

Defendant contends that the trial court violated section 654 by sentencing him on each of several counts falling into three groupings. His first contention, which addresses the two attempt to burn convictions, is mooted by reversal of one of those convictions. We thus address only the contentions regarding the other two groupings.

a. Grand theft and felony vandalism based upon damage to townhouse

The trial court imposed eight-month terms for both the grand theft (count 10) and felony vandalism (count 11) convictions based upon the damage defendant caused to the townhouse. Defendant contends this violated section 654 because he acted pursuant to a single objective: damaging the townhouse. The Attorney General argues that punishment on each of these counts was permissible because defendant inflicted the damage over a period of several months. But both counts 10 and 11 pertained to the total damage Andrade found on August 11. The information and jury verdicts specified that both of these counts were committed on or about August 11.

At trial, the prosecutor argued that the grand theft pertained to the removal of items from the house, such as appliances, whereas the vandalism pertained to the damage inflicted. Defendant's intent in writing on walls, pouring concrete in one toilet and down several drains, and stripping away and discarding drywall was necessarily to damage the townhouse to make it less valuable. But the appliances, cabinets, faucets, and other fixtures defendant removed from the townhouse had value and, although there was no evidence regarding what defendant did with them, the trial court reasonably could have concluded defendant removed them not simply to diminish the value of the townhouse, but also to enrich himself by selling them. His distinct, though simultaneous objectives support sentencing on both counts.

b. Burglary and vandalism of SUV and violation of restraining order

The trial court imposed eight-month terms for both the burglary (count 1) and felony vandalism (count 5) of Villagrana's SUV and a one-year term for violating the restraining order (count 3). Defendant contends this violated section 654 because he violated the restraining order when he burglarized and vandalized the SUV. He does argue that no pertinent distinction can be drawn between the burglary and vandalism of the SUV.

When defendant burglarized the SUV, he took numerous items of property belonging to Villagrana, including the personal papers from which defendant obtained a

considerable amount of detailed personal information about Villagrana that was sufficiently useful to defendant that he wrote it all on the legal pad found in his car at the time of his arrest. Defendant kept at least some of Villagrana's property at his parents' home, which indicates that the property had some value or utility to him. The trial court could thus conclude that defendant's intent in burglarizing the SUV was to obtain possession of property he found within it, whereas his intent in puncturing the tire and scratching the paint was to inflict damage to the vehicle, thus causing annoyance and expense to its owner. The trial court could further conclude that defendant acted pursuant to a third objective when he violated the restraining order: to violate the order, to observe the residents or activity there, or to contact the residents if he happened to see them. Once there, he found Villagrana's car and developed the other objectives of burglarizing and damaging the car. Accordingly, defendant may be separately punished for each of these offenses.

DISPOSITION

Count 8 is reversed for insufficient evidence. In all other respects, the judgment is affirmed. The trial court is directed to issue an amended abstract of judgment omitting count 8 and reducing the total sentence by eight months and forward a copy to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.